## United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

## Advice Memorandum

DATE: July 12, 2010

TO : Alvin Blyer, Regional Director

Region 29

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Metallic Lathers Local 46

(Norberto Construction)

Case 29-CP-707

This case was submitted for advice to determine whether the Union violated Section 8(b)(7)(C) when it displayed an inflatable pig balloon at a construction jobsite, along with a sign on the balloon that does not specifically identify that a labor dispute is ongoing. We conclude that the Region should dismiss this charge because the evidence fails to establish that the Union's display of the balloon constitutes picketing under the meaning of Section 8(b)(7).

In the spring of 2010, officials of Respondent Metallic Lathers Local 46 demanded that Charging Party Norberto Construction recognize and bargain with it as representatives of its employees. In pursuit of that objective, the Union erected an inflatable pig balloon at the Employer's jobsite. Although the pig balloon initially had no sign on it, after approximately one week the Union hung a sign on the front of the balloon, which reads, "Norberto Pools Shame On You." Two or so Union agents sit in lawn chairs next to the balloon; no other signs exist that would identify the situation as involving a labor dispute. As of late June, the Union has continued to erect the pig balloon at the site.

We conclude that, under these circumstances, the Union's erection of the inflatable pig balloon does not constitute picketing within the meaning of Section 8(b)(7). The General Counsel has argued to the Board that a union's use of a large inflatable rat balloon, considered a well-known symbol of a labor dispute, could constitute signal picketing intended to induce neutral employees to withhold their labor or to persuade third persons not to do business with neutral business establishments. However, the General

 $^{\rm 1}$  The General Counsel has made essentially the same Section 8(b)(4) signal picketing argument in cases involving large banners placed at entrances to neutral employer

establishments. See, e.g., Carpenters Local 1506 (AGC San

Counsel has not argued, and there is no evidence to suggest, that inflatable balloons depicting other characters such as pigs, cats or Uncle Sam have a historical significance in the labor movement similar to the depiction of a rat. Rather, these displays merely serve generally to draw attention to a union's activities and dramatize the union's dispute. As such, absent other confrontational or picketing activities, they are lawful attention-getting devices designed to visually disseminate ideas to passersby, and to provoke onlookers to inquire further, rather than conduct intended to confront.

Here, the Union's use of the pig balloon, standing alone, does not constitute picketing within the meaning of Section 8(b)(7). There is nothing obvious to the general public that would tie the balloon to the presence of a labor dispute. As set forth above, a pig has no historical relationship to disputes between employers and organized labor and the sign the Union attached to the balloon merely stated "Shame" on the Employer, without making any reference to a labor dispute.

<u>Diego Chapter, Inc.)</u>, 21-CC-3307, Appeals Minute dated August 22, 2002; <u>Carpenters Local 184</u>, Case 28-CC-971, Advice Memorandum dated August 17, 2004.

<sup>&</sup>lt;sup>2</sup> See Construction and General Building Laborers Local 79 (C&D Restoration, Inc.), Case 2-CP-1036-1, Advice Memorandum dated August 15, 2003, at p. 9, n.18 (union's use of inflated skunk balloon not a factor in finding that union engaged in unlawful picketing; skunk has no significance in labor context and therefore its display is not signal to employees or public to take action).

<sup>3</sup> See, e.g., Metropolitian Regional Council of Carpenters, et al. (St. Luke's Hospital and Health Network), Case 4-CC-2522, Advice Memorandum dated March 16, 2009 [FOIA Exemption 5

Regional Council of Carpenters (HCR Manor Care), Case 4-CC-2451, et al., Advice Memorandum dated March 13, 2006 (display of mock coffin outside nursing home not unlawful, despite proximity of unlawful banner); UNITE, 5-CC-1278, et al., Advice Memorandum dated April 1, 2004 (use of puppets and street theater not unlawful, despite simultaneous presence of unlawful bannering).

Accordingly, the Region should dismiss this charge, absent withdrawal.

B.J.K.